

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

**From:** Scott Hallabrin, General Counsel

**Subject:** Finding Required for Holding Special Meeting on Less than 10 days' Notice – Government Code Section 11125.4(c)

**Date:** March 18, 2008

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Proposed Commission Action and Staff Recommendation: Make a finding, under Government Code Section 11125.4(c), that holding this meeting on less than the usual 10 days' notice is necessary, as described below.

Reason and Authority for Meeting on Less than 10-Days' Public Notice: This meeting has been convened by giving less than the usual 10-days' notice to the public. This is permissible under Government Code Section 11125.4 when a state body needs to consider, among other things, pending litigation and compliance with the usual 10-day notice requirement in the Bagley-Keene Open Meeting Act (see Gov. Code Sec. 11125) "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest" (Gov. Code Sec. 11125.4(a)). When a body acts under this provision, it must give at least 48-hours' advance notice of its meeting (see Gov. Code Sec. 11125(b)) and make the finding of substantial hardship or protecting the public interest in open session.

On March 5, 2008, a lawsuit was filed against the Commission (*Carole Migden, et al. v. California Fair Political Practices Comm., et. al.*, Federal District Court for the Eastern District of California, Case No. 2:08-CIV-486 LEW-EFB) and the Commission is required to file an answer and any counter claims in the suit by March 25, 2008. To preserve its rights and interests in the litigation and comply with the procedural deadline for filing its answer and possible counter claims in this case, it is necessary for the Commission to receive and consider all information that may be relevant to the case before the March 25<sup>th</sup> filing deadline.

On March 17, 2008, the Commission's Enforcement Division received a signed stipulation from the Plaintiffs in the federal court action described above. The stipulation, which is subject to the Commission's approval, is an agreement in which the Plaintiffs in the federal action admit to numerous violations of the Political Reform Act on issues that the Plaintiffs and the Enforcement Division agree can be resolved without litigation. The stipulation will not resolve the issues currently before the federal court. However, the violations covered by the stipulation arise out of actions by the same committees involved in Plaintiff's federal court complaint and involve the same time

periods and possibly some of the same conduct and campaign funds at issue in that case. Thus, the matters in the stipulation may relate to the issues that remain before the federal court and in any event the Commission's decision on whether to accept or reject the stipulation may bear on the Commission's actions and strategy in the federal case. Failure by the Commission to immediately obtain and consider the information in the stipulation could thus have a potentially prejudicial effect on its actions in the federal case. As a consequence, it is necessary for the Commission to hear and decide the stipulation as soon as possible before the March 25, 2008 filing deadline in the federal action, and this may only be accomplished by holding a Commission meeting with less than the usual 10-days' notice prior to holding the meeting, as permitted under Government Code Section 11125.4.

Recommended Finding: Based on the foregoing, staff proposes the Commission make the following finding:

1. The Commission is a defendant in the case of *Carole Migden, et al. v. California Fair Political Practices Comm., et. al.*, Federal District Court for the Eastern District of California, Case No. 2:08-CIV-486 LEW-EFB. The Commission must file an answer and any counterclaims in the case no later than March 25, 2008.
2. If the Commission misses the March 25, 2008 filing deadline or fails to file the appropriate response or take other necessary legal action by that date, the Commission's position in that litigation may detrimentally affected.
3. On March 17, 2008, the Commission's Enforcement Division received a signed stipulation from the Plaintiffs in the *Migden v. FPPC* case that covers violations of the Political Reform Act on issues that the Plaintiffs and the Commission's Enforcement Division agree can be resolved without litigation. The stipulation, which is subject to the Commission's approval, will not resolve the issues currently before the federal court. However, the issues covered by the stipulation arise out of actions by the same committees involved in Plaintiff's federal court complaint and involve the same time periods and possibly some of the same conduct and campaign funds at issue in that case. The Commission's decision on whether to accept or reject the stipulation may bear on the Commission's actions and strategy in the federal case.
4. Failure by the Commission to immediately obtain and consider the information in the stipulation could thus have a potentially prejudicial effect on its actions in the federal case, thereby imposing a substantial hardship on the Commission in the litigation and jeopardizing the public interest.
5. As a consequence, it is necessary for the Commission to hear and decide the stipulation as soon as possible before the March 25, 2008 filing deadline in the federal action, and this may only be accomplished by holding a Commission meeting with less than the usual 10-days' notice prior to holding the meeting, as permitted under Government Code Section 11125.4.

Voting on the Finding: Government Code Section 11125(c) requires a two-thirds vote (four votes) to make the finding if all Commissioners are present and a unanimous vote if less than all Commissioners are present.